

HOPKINTON ZONING BOARD OF ADJUSTMENT

RULES OF PROCEDURE

Authority

These Rules of Procedure are adopted under the authority of New Hampshire Revised Statutes Annotated, ~~1983~~, Chapter 676:1, and the Zoning Ordinance and Map of the Town of Hopkinton.

Officers

- (1) A ~~chairman~~ **chairperson** shall be elected annually by a majority vote of the Board following the Annual Town Meeting. The ~~chairman~~ **chairperson** shall preside over all meetings and hearings, appoint such committees as directed by the Board, and shall affix ~~his/her~~ **their** signature in the name of the Board.
- (2) A vice-chairperson shall be elected annually by a majority vote of the Board following the Annual Town Meeting. The vice-chairperson shall preside in the absence of the Chairperson and shall have the full powers of the Chairperson on matters which come before the Board during the absence of the Chairperson.
- (3) All officers shall serve for one year and shall be eligible for re-election.

~~Terms, members and alternates~~

- ~~(1) Terms of members and Alternate Members shall take the oath of office for a term of three years. Appointments made to fill vacancies on the Board shall be for the remainder of the terms in accordance with RSA 673:12.~~
- (1) Members are expected to attend each meeting of the Board to exercise their duties and responsibilities. Any member unable to attend a meeting shall notify the ~~Chairman~~ **Chairperson** or Planning Director as soon as possible. Members, including the ~~Chairman~~ **Chairperson** and all officers, shall participate in the decision-making process.
- (2) Alternate members shall be appointed, as provided for by the local legislative body, and will attend all meetings to familiarize themselves with the workings of the Board to stand ready to serve whenever a regular member of the Board is unable to fulfill ~~his/her~~ **their** responsibilities.
- (3) At meetings of the ZBA, alternates who are not activated to fill the seat of an absent or recused member or who have not been appointed by the Chairperson to temporarily fill the unexpired term of vacancy, may participate with the Board in a limited capacity. During a public hearing, alternates may sit at the table with the regular members and may view documents, listen to testimony, ask questions and interact with other Board members, the applicant, abutters and the public. Alternates shall not be allowed to make or second motions. Once the Board moves into deliberations, alternates shall remove themselves from the table and no longer participate with the Board. During work sessions or portions of meetings that do not include a public hearing, alternates may fully

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participate, exclusive of any motions or votes that may be made. At all times the Chairperson shall fully inform the public of the status of any alternate present and identify the members who shall be voting on an the application.

Meetings

- (1) Regular meetings shall be held at the Hopkinton Town Hall at ~~7:00~~ 5:30 PM on the first Tuesday of each month ~~unless otherwise posted~~. Other meetings may be held on the call of the Chair, provided public Notice and Notice to each member is given ~~not less than five (5) days prior to such meetings~~ in accordance with RSA 91-A:2, II.
- (2) Quorum: A quorum for all meetings of the Board shall be three (3) members, including alternates sitting in place of members.

~~RSA 674:33 provides that "...the concurring vote of 3 members of the board shall be necessary to reverse any action of an administrative official or to decide in favor of any appeal...". For this reason, the Board will make every effort to ensure that a full five (5) member board is present for the consideration of any appeal.~~

- (a) The Chairperson shall make every effort to ensure that all five members, and one or two alternates, are present for the consideration of any appeal or application.
- (b) If any regular Board member is absent from any meeting or hearing, or disqualifies himself ~~himself~~ from sitting on a particular case, the ~~Chairman~~ Chairperson shall designate one of the alternate members to sit in place of the absent or disqualified member, and such alternate shall be in all respects a full member of the Board while so sitting.
- (c) Alternates shall be activated on a rotating basis from those present at a particular meeting. When an alternate is needed, the Chairperson shall select the alternate who has not been activated for the longest time. If two or more alternates meet that criteria, the alternate who has served the longest shall be activated.
- (d) If there are less than five members (including alternates) present, the Chairperson shall give the option to proceed or not to the applicant. Should the applicant choose to proceed with less than five members present, that shall not solely constitute grounds for a rehearing should the application fail.
- (e) If the applicant opts to postpone due to less than a full Board present, the Board shall announce the time, date, and location of the continued hearing. If the Board cannot determine the time, date, and location of the continued hearing, the Board shall provide a new notice to all parties pursuant to RSA 676:7.

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- (3) Disqualification: If any member finds it necessary to disqualify ~~himself~~ **themselves** from sitting in a particular case, as provided in RSA 673:14, ~~he or she~~ **they** shall notify the ~~Chairman~~ **Chairperson** as soon as possible so that an alternate may be requested to sit in ~~his or her~~ **their** place. When there is uncertainty as to whether a member should be disqualified to act on a particular application, that member or another member of the Board may request the Board to vote on the question of disqualification. Any such request shall be made before the public hearing gets underway. The vote shall be advisory and non-binding. ~~The disqualification shall be announced by either the Chairman or the member disqualifying himself before the beginning of the public hearing on the case. The disqualified member shall absent himself from the Board table during the public hearing and during all deliberation on the case.~~

Determining the threshold of disqualification can be difficult. To assist a member in determining whether or not they should recuse themselves, Board members should review the questions which are asked of potential jurors to determine qualification (RSA 500-A:12).

- (a) Expects to gain or lose upon the disposition of the case;
- (b) Is related to either party;
- (c) Has advised or assisted either party;
- (d) Has directly or indirectly given an opinion or formed an opinion;
- (e) Is employed by or employs any part in the case;
- (f) Is prejudiced to any degree regarding the case; or
- (g) Employs any of the counsel appearing in the case in any action then pending in the court.

The Chairperson or the member disqualifying themselves before the beginning of the public hearing on the case shall announce the disqualification. The disqualified member shall exit the meeting room during the public hearing and all deliberations on the case.

- (4) Order of Business: The order of business for regular meetings shall be as follows:
- (a) Call to order by the ~~Chairman~~ **Chairperson**
 - (b) Roll call by the ~~Chairman~~ **Chairperson**
 - (c) Public Hearing
 - (d) Minutes of previous meeting
 - (e) Unfinished business
 - (f) New business
 - (g) Communications and miscellaneous
 - (h) Adjournment

Application/Decisions

- (1) Applications:

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- (a) Each application for a hearing before the Board shall be made on forms provided by the Board and shall be presented to the Planning Director, **who shall record the date of receipt with signature.**
 - (b) Appeals from an administrative decision taken under RSA 675:5 shall be filed within ~~forty-five (45)~~ **30** days of the decision.
 - ~~(c) All applications shall be filed at least fifteen (15) days before the date of the meeting. See schedule of meeting dates.~~
 - (c) All forms and revisions prescribed shall be adopted by resolution of the Board and shall become part of these rules of procedure.
- (2) Public Notice:
- (a) ~~Public Notice of public hearings on each application shall be given in the Concord Monitor and shall be posted at the Town Hall and Town Clerk's Office not less than five days (5) before the date fixed for the hearing. Notice shall include the name of the applicant, description of property to include tax map identification, action desired by the applicant, provisions of the Zoning Ordinance concerned, the type of appeal being made, and the date, time, and place of the hearing.~~ **manner prescribed in RSA 676:7.**
 - (b) ~~Personal Notice shall be made by certified mail to the applicant and all abutters not less than five (5) days before the date of the hearing. Notice shall also be given to the Planning Board, Town Clerk, and other parties deemed by the Board to have special interest. Said Notice shall contain the same information as the public.~~
 - (c) Costs of all required notices must be paid for, in advance, by the applicant.
- (3) Public Hearing: The conduct of public hearings shall be governed by the following rules:
- (a) ~~Chairman will explain the function of the Zoning Board of Adjustment, as opposed to the Zoning Board (Selectmen).~~
 - (b) The applications are taken in the order that they were posted for the meeting; however, they can be taken out of order if the Board desires to do so ~~for good cause.~~
 - (c) Each application will begin with the applicant and ~~his or her~~ **their** authorized representative presenting and explaining ~~his or her~~ **the** application in detail.
 - ~~• The Board would ask that the applicants stand, come forward and address the Board.~~

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- ~~It is important that the audience hears the applicant, but it is imperative that the Board hears the applicant.~~
 - ~~The applicant may use a display board for visual displays during his or her presentation.~~
 - ~~The applicant should present his or her entire case, as this will be the only opportunity during the hearing that he or she will have to explain the application and convince the Board that he or she qualifies for a Variance or Special Exception, as the case may be.~~
- (d) ~~At the conclusion of the applicant's case, the Board members will have an opportunity to ask any questions of the applicant that they may desire.~~
- (e) Each person who appears shall be required to state their name and address and indicate whether they are a party to the case or an agent or counsel of a party to the case.
- (f) Any member of the Board, through the Chairperson, may request any party to the case to speak a second time.
- (g) Any party to the case who wants to ask a question of another party must do so through the Chairperson.
- (h) When the Board has concluded its questions, the Board will solicit testimony from abutters to the application. The Board will be soliciting testimony from abutters who are either in favor or in opposition.
- (i) If Non-abutters wish~~ing~~ to address the Board when non-abutter testimony is called for, they will first be required to convince ~~demonstrate~~ the Board that they are ~~or would be~~ directly affected by the proposal under consideration.
- (j) ~~Should an abutter desire to speak in favor of or in opposition to a particular application and they are unsure whether or not they are an abutter, the Board has a list of the abutters for each application at its disposal to assist in clarifying the situation. However, generally, if a property owner received a certified letter in the mail they are an abutter to at least one of the application.~~
- (k) ~~Lastly, in regards to public testimony,~~ The Board will hear from any other Town Board, Commission, and Department Head of the Town, should they wish to offer testimony.
- (l) ~~The Board requests that the public testimony be confined to the application that the Board is considering at this particular time. The Board will solicit comments as to why the application should or should not be granted, as it relates to the Zoning Ordinance and the conditions necessary to be granted a Variance, Special Exception, Appeal from Administrative Decision, or Equitable Waiver of Dimensional~~

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~~Requirements. Simple statements of "I am in favor" or "I am opposed" to the application should not be used, as the Board tends to put very little weight on "straw polls."~~ The Board will only hear evidence that pertains to the facts of the case or how the facts relate to the provisions of the Zoning Ordinance and State zoning law.

- (m) At the conclusion of all public testimony, the applicant will have one opportunity ~~and one opportunity only~~ to rebut what has been said by any members of the public who has given testimony.
 - (n) At the conclusion of the applicant's rebuttal, the audience will then have an opportunity ~~and one opportunity only~~ to rebut anything that has been said by the applicant in his ~~his~~ **their** rebuttal.
 - (o) All testimony from the applicant and the public having been received, **public testimony will be closed** ~~the Board will discuss the application at its conclusion and vote on the application in public.~~
 - (p) ~~During~~ ~~T~~the Board's **will** ~~deliberation~~ **deliberate** on each application and subsequent vote in public, ~~the Board request that member of the public be quiet and attentive, not only for the Board's benefit, but more importantly, for anyone in the audience who wishes to hear the Board's deliberation process and subsequent vote.~~
 - (q) ~~Anyone wishing to address the Board, please state their complete name and legal address, so that it may be properly recorded in the minutes of the meeting. All meetings are tape recorded, and while individual members or collectively, the Board may know an abutter or applicant who wishes to testify, the Board would still ask that those wishing to speak give their name and legal address so that it may be recorded on the tape recorder for reference in writing of the Board's minutes.~~
 - (r) Any party to the action or proceedings, or any person affected thereby, may apply for a rehearing. Application, in writing, must be submitted to the Zoning Board of Adjustment within 30 calendar days commencing tomorrow. Such a request must include the reason or reasons. A simple statement entitled "Request for a Rehearing" is not sufficient. All rehearing requests must be acted upon within 30 days from receipt.
- (4) **Voting:** The Chairperson may assign the task of drafting a motion to a Board member who shall bring a draft motion to the Board at the continuation of the deliberative portion of the meeting for the consideration of the Board. Should a motion result in a tie vote or not receive the necessary three (3) votes to decide, the Board must put forth a new motion until the necessary three (3) votes set forth a decision.
- (5) **Decisions:** The Board shall decide all cases within 30 days of the close of the public hearing ~~to~~ **and shall** approve, approve with conditions, or deny the appeal, unless the Board continues the application. Notice of the decision will be made available for public

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inspection within ~~144 hours~~ **five (5) business days**, as required by RSA 676:3, and will be sent to the applicant **by certified mail**. If the appeal is denied, the Notice shall include the reasons therefore. ~~The Notice shall also be given to the Planning Board, the Board of Selectmen, Town Clerk, Tax Assessor, and other Town officials as determined by the Board.~~ Notice shall be posted at the Town Clerk's Office and the Town Hall.

- (6) **Reconsideration by the Board / Motions for Rehearing:** The Board may reconsider a decision to grant or deny an application or grant or deny a motion for rehearing, provided such reconsideration is within the appeal period of the original decision as per *74 Cox Street, LLC v. City of Nashua* [September 21, 2007]. Motions for Rehearing can only be received in the office of the Board during normal business hours. See *Cardinal Development v. Winchester*, 157 NH 710 (2008).
- (7) **Rehearing Procedures:** If the Board grants a motion for rehearing, a new public hearing shall be held within 30 days of the decision to grant the rehearing, provided all notice fees are paid, and an updated abutters list is submitted by the party requesting the rehearing. Notification of the rehearing shall follow the procedures set forth in RSA 676:7.

Records

- (1) The records of the Board shall be kept by the Planning Director and made available for public inspection at the Board's office in accordance with RSA 673:17.
- (2) Final written decisions will be placed on file and available for public inspection within ~~144 hours~~ **five (5) business days** after the decision is made. RSA 676:3
- (3) Minutes of all meetings, including names of the Board members, persons appearing before the Board, and a brief description of the subject matter, shall be open to public inspection within ~~144 hours~~ **five (5) business days** of the public meeting. **Approved minutes must be posted on the website in a consistent and reasonably accessible location, or a notice must be posted and maintained on the website stating where minutes may be reviewed and copies requested.** RSA 91-A:2 II.

Amendments

These Rules of Procedure may be amended by a majority vote of the members of the Board. ~~provided that such amendment is read at two successive meetings immediately preceding the meeting at which the vote is to be taken. Public Notice of the meetings shall be posted in the Concord Monitor and at the Town Hall and Town Clerk's Office not less than five days (5) before the date fixed for the hearing.~~ **The Board shall hold a public hearing prior to the adoption of new rules or amendemnts. Notice of the time and place of the hearing shall be in as provided in RSA 676:7.**

Waivers

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Any portion of these Rules of Procedure may be waived in such cases where, in the opinion of the Board, strict conformity would pose a practical difficulty to the applicant, and waiver would not be contrary to the spirit and intent of the rules.

Joint Meetings and Hearings

- (1) RSA 676:2 provides that the Board of Adjustment may hold joint meetings or hearings with other "land use boards," including the planning board, the historic district commission, the building code board of appeals, and the inspector of buildings, and that each Board shall have discretion as to whether or not to hold a joint meeting.
- (2) Joint business meetings with any other land use board may be held at any time when called jointly by the chairpersons of the two boards.
- (3) A public hearing on any appeal to the Board of Adjustment will be held jointly with another board **only** under the following conditions:
 - (a) The joint public hearing must be a formal public hearing on appeals to both boards regarding the same subject matter; and
 - (b) If the other Board is the Planning Board, RSA 676:2 requires that the Planning Board chairperson shall chair the joint hearing. If the other Board is not the Planning Board then the Board of Adjustment chairperson shall chair the joint hearing; and
 - (c) The provisions covering the conduct of public hearings, set forth in these rules, together with such additional provisions as may be required by the other Board, shall be followed; and
 - (d) The other Board shall concur ~~in~~ with these conditions.